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ABSTRACT

This report measures progress in the implementation of the Americans with Disabilities Act of 1990 (ADA). The report notes the life experiences of people with disabilities and the social values which led to passage of the ADA, and reviews early signs of implementation success. The report then summarizes findings and recommendations emanating from a February 1994 national meeting of experts and from an August 1994 roundtable discussion in Seattle, Washington, which provided a local perspective on the law's impact. Five themes emerging from the national meeting included: correct misunderstandings regarding the ADA, improve educational efforts, clarify and strengthen the legal framework, provide resources and coordinate federal enforcement efforts, and provide more technical assistance. The Seattle roundtable focused on issues of employment, public services, public accommodations and services operated by private entities, telecommunications, transportation, and implementation at the local and state level. The report finds that impressive progress has occurred in the law's implementation, though further efforts are necessary in order to increase public awareness, provide education and clarification regarding ADA provisions, and provide resources necessary to encourage voluntary compliance and ensure effective enforcement. Appendices offer a brief description of the ADA; a list of national meeting participants; statistical information on the ADA as of September 30, 1994; and a description of the National Council on Disability. (JDD)

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# THE AMERICANS WITH DISABILITIES ACT: ENSURING EQUAL ACCESS TO THE AMERICAN DREAM

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## National Council on Disability
## January 26, 1995

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National Council on Disability

**The Americans with Disabilities Act:**
**Ensuring Equal Access to the American Dream**

**Publication date: January 26, 1995**

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**NATIONAL COUNCIL ON DISABILITY**

*An independent federal agency working with the President and the Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.*

**January 26, 1995**

**The President**
**The White House**
**Washington, DC 20500**

**Dear Mr. President:**

**The National Council on Disability is pleased to submit to you this report entitled, *The Americans with Disabilities Act: Ensuring Equal Access to the American Dream*. Under its Congressional mandate, the National Council on Disability is charged with the responsibility to gather information on the implementation, effectiveness, and impact of the Americans with Disabilities Act. This report measures progress to date in the implementation of this landmark civil rights legislation from the perspectives of people with disabilities, private sector representatives, local, State, and Federal government officials, and national experts in the field of disability policy.**

**Overall, impressive progress has occurred in the implementation of the Americans with Disabilities Act. However, given the many areas where compliance has not yet been achieved and in recognition of the relatively brief time in which the law has been in effect, it is clear that further efforts are necessary in order to increase public awareness of the Act, provide education and clarification regarding the provisions of the Act to covered entities, and provide resources necessary to both encourage voluntary compliance and to ensure effective enforcement.**

**Today, as we observe — and celebrate — further progress in the full implementation of the Americans with Disabilities Act, I would once again pledge our unwavering commitment to ensuring that equality of opportunity, full participation, independent living, and economic self-sufficiency become realities in the lives of Americans with disabilities. Under your leadership I remain confident that we can continue to build an America where all citizens have equal access to the American dream.**

**Sincerely,**

Marca Bristo

**Marca Bristo**
**Chairperson**



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*This report was prepared under contract by Edward P. Burke*

## ACKNOWLEDGEMENTS

**The National Council on Disability wishes to thank the many government officials who participated in its meetings on the Americans with Disabilities Act (ADA) and provided data regarding their efforts to implement the ADA. Most of all, the Council wishes to thank the many consumers, advocates, and representatives of both public and private sector agencies who shared their experiences, suggestions and valuable time with us in order to assist us in our ongoing efforts to assesss the implementation, effectiveness, and impact of the Americans with Disabilities Act. Finally, the Council wishes to express its appreciation to the staff, and Edward P. Burke whose hard work made this report possible.**

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# *INTRODUCTION*

**The National Council on Disability is the Federal agency which first proposed what was to later become the Americans with Disabilities Act to the President and Congress of the United States. In 1986, the Council issued a landmark report entitled *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities -- With Legislative Recommendations*. The first recommendation made in this report was as follows:**

> ***Congress should enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap.* (p.18).[1]**

**Since the passage of the Americans with Disabilities Act, the National Council on Disability has been charged with gathering information regarding the implementation, effectiveness, and impact of the Americans with Disabilities Act (ADA).[2] In response to this mandate, in April of 1993 the Council provided the Administration, the Congress, and the public with an early assessment of the implementation of the ADA. *ADA Watch --Year One: A Report to the President and the Congress on Progress in Implementing the Americans with Disabilities Act* detailed initial progress in the implementation of the law and provided many recommendations for increasing and improving compliance with the law.**

**Since the publication of this report, the Council has continued its ADA-related monitoring activities. In February of 1994 the Council sponsored a national meeting of experts regarding progress in ADA implementation at the United States Senate. In August of 1994 the Council sponsored an ADA Roundtable in Seattle, Washington, that provided a local perspective on the law's impact to date. The present report summarizes the findings and recommendations emanating from these two events and is intended to provide the Administration, the Congress, and the public with an updated assessment of the ADA's effectiveness. Over the course of the next year, the Council intends to continue its ADA monitoring activities in order to assist the Nation in creating a society in which every citizen has equal access to the American Dream.**

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[1] National Council on the Handicapped. (1986). *Toward Independence: An Assessment of Federal Laws and Programs Affecting Citizens with Disabilities -- With Legislative Recommendations*. Washington, DC: Author. Note: The National Council on the Handicapped has since been renamed the National Council on Disability.

[2] P.L. 102-569 §401(a)(7).

## *THE AMERICANS WITH DISABILITIES ACT: VALUES WE CAN AGREE ON*

***Together we've begun to shift disability in America away from exclusion, towards inclusion; away from dependence, towards independence; away from paternalism, towards empowerment...And we have made a commitment — a real commitment — to enforce the Americans with Disabilities Act, until all citizens with disabilities receive equal treatment under the law, whether in the workplace, or school, in government or in the courts.***

**- President William J. Clinton**

**On July 12, 1990, the Americans with Disabilities Act passed the U.S. House of Representatives on a vote of 377-28. The next day, it passed the Senate on a vote of 91-6. Shortly thereafter, on July 26, 1990, the Act was signed by President George Bush on the South Lawn of the White House in front of over 3,000 disability advocates, the largest bill-signing ceremony that had ever taken place at the White House. Clearly, the ADA was passed in an atmosphere of great support from the Congress, the Administration, and the community at large.**

***It's been the work of a true coalition. A strong and inspiring coalition of people who have shared both a dream and a passionate determination to make that dream come true. It's been a coalition in the finest spirit. A joining of Democrats and Republicans. Of the Legislative and the Executive branches. Of public officials and private citizens. Of people with disabilities and without.***

**- President George Bush**

**At the time of the Act's passage, other elected officials noted both the importance and the anticipated results of the Act:**

***The ADA is now the law of the land. From now on, Americans with disabilities will be treated as first-class citizens. Today, we say "no" to ignorance, and "no" to prejudice. Segregation is finished! Today, we say "yes" to dignity and respect for disabled people; "yes" to empowerment; and "yes" to judging people on abilities, <u>not</u> disabilities. The ADA truly is the 20th century emancipation proclamation for people with disabilities.***

**- Senator Tom Harkin**

*For too long Americans with disabilities have had to face subtle and pervasive discrimination. As a nation, discrimination deprives us of our dignity and suppresses our strength. The disability community recognized this striking fact and the President and Congress responded with the enactment of the Americans with Disabilities Act.*

**- Senator Bob Dole**

*The Americans with Disabilities Act represents America at its best. Few, if any, pieces of legislation in the two centuries of our history have offered greater promise for so many of our fellow citizens...And America will be better, fairer, and a stronger nation because of it.*

**- Senator Edward M. Kennedy**

*The time has come. Congress has sent a loud, clear message across this country — individuals with disabilities, no less than other Americans, are entitled to an equal opportunity to participate in the American dream. That dream can now become reality.*

**- Senator Orrin Hatch**

*Dependency increases the costs of entitlements, lowers our gross national product, and reduces revenue to the Federal government...People with disabilities want to work...to be productive, self-supporting and tax paying participants in society. The Americans with Disabilities Act grants us that dignity and that right.*

**- Former Congressman Tony Coelho**

*This is important legislation that will extend to individuals with disabilities full civil rights — in the public and private sector...The final vote in Committee was 35 to 0, a reflection of the true bipartisan spirit for the legislation.*

**- Congressman Newt Gingrich**

*ADA will empower people to control their own lives. It will result in a cost savings to the Federal government. As we empower people to be independent, to control their own lives, to gain their own employment, their own income, their own housing, their own transportation, taxpayers will save substantial sums from the alternatives.*

**- Former Congressman Steve Bartlett**

**In passing the ADA four years ago, the Congress stated the following facts concerning the life experiences of people with disabilities in America:**

- **43,000,000 Americans have one or more disabilities;**
- **historically, society has tended to isolate and segregate individuals with disabilities;**
- **discrimination against individuals with disabilities negatively affected areas such as employment, housing, public accommodations, education, transportation, communication, etc.;**
- **individuals with disabilities have no legal recourse to redress such discrimination;**
- **individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion as well as the negative effects of discrimination such as relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;**
- **national data indicate that individuals with disabilities occupy an inferior status in society and are severely disadvantaged socially, vocationally, economically, and educationally;**
- **as a group, individuals with disabilities have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness; and**
- **the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue opportunities, costing the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.**

**Given these realities, the Congress determined that *the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.*[3] Thus, the Americans with Disabilities Act (ADA)[4] was passed in order to:**

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[3] **P.L.101-336, §2(a)(1-9).**

[4] **For a brief summary of the provisions of the ADA, please see Appendix A.**

- provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

- provide clear, strong, consistent, enforceable standards addressing discrimination;

- ensure that the Federal government plays a central role in enforcing the standards against discrimination; and

- invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce.[5]

Over the course of the past four years, the Federal government has issued regulations to implement the ADA; provided technical assistance to States, local governments, and the private sector; and has begun to bring other Federal laws regarding disability policy and programs into harmony with the ADA.[6] In this regard, the Federal government has demonstrated a firm commitment to not only enforcing the law, but in effectively targeting resources to encourage voluntary compliance on the part of all concerned parties.

The values embodied in the Americans with Disabilities Act — equal protection under the law, individual empowerment, freedom of association, economic opportunity, etc. — are important to and for all Americans. Indeed, as Congress has since found that disability is a natural part of the human experience, all citizens have an interest in ensuring that the values that form the basis for the Americans with Disabilities Act pervade our national life. It is for this reason that the Americans with Disabilities Act has enjoyed such broad bipartisan support.

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[5] P.L. 101-336, §2(b)(1-4).

[6] See, for example, the Rehabilitation Act Amendments of 1992, P.L. 102-569.

## *THE AMERICANS WITH DISABILITIES ACT: EARLY SIGNS OF SUCCESS*

**When the National Council on Disability published its first report on the implementation of the ADA[7], it offered the following findings:**

1. **The Federal government has, overall, performed well in its ADA implementation responsibilities.**

2. **The disability community has generally, in these early days of the ADA, taken an ADA implementation strategy of "educate and negotiate, and litigate as a last resort."**

3. **Many organizations serving covered entities, such as trade associations, have initiated significant efforts to assist their members with ADA implementation.**

4. **The projections that ADA implementation would <u>not</u> be unduly burdensome to businesses appear to have been well founded.**

5. **The ADA has opened up new opportunities for disability-related activities in the nonprofit community.**

6. **Entrepreneurial activities stimulated by the ADA have had very mixed results: some have been helpful, others highly counterproductive.**

7. **Early efforts by covered entities to implement the ADA's employment provisions have helped to remove formal barriers to employment of people with disabilities, but many barriers still exist.**

8. **Some of the most productive ADA implementation activities have involved cooperative efforts between and among government agencies, businesses and business organizations, and the disability community.**

9. **The need for information and technical assistance continues to grow, outstripping Federal and State resources.**

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[7] **National Council on Disability. (1993). *ADA Watch--Year One: A Report to the President and Congress on Progress in Implementing the Americans with Disabilities Act.* Washington, DC: Author.**

10. While efforts to inform people with disabilities and covered entities about the ADA have been substantial, many large gaps still exist.

11. Covered entities are looking for the greatest degree of certainty of being in compliance with the ADA that the Federal government can offer.

12. Numerous technical issues involving the interpretation and application of the ADA and its regulations have been raised, including the use of edge warning devices on transit platforms and accessibility standards for recreation areas.

Thus, as of April 1993, the National Council on Disability expressed optimism regarding ADA implementation efforts to date and urged further action through a detailed set of recommendations for the President and the Congress. Some of the more pertinent recommendations included the following:

1. To sustain the substantial progress achieved in implementing the ADA during its early stages, no amendments to the law should be made at this time.

2. The Federal government should plan, coordinate, and fund a media campaign to disseminate accurate information about the ADA through public service announcements on radio and television.

3. Systematic outreach and technical assistance efforts should be initiated that focus on small businesses and communities outside major metropolitan areas.

4. The next generation of technical assistance materials should be more industry- and profession-specific.

5. More technical assistance should be provided to State and local government entities.

6. The Federal government should cultivate and coordinate ADA leadership in the private sector and the disability community and thereby become more a catalyst than the provider of technical assistance.

7. The Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, and the Access Board should prepare

and disseminate regular technical guidance memoranda regarding ADA policy decisions.

8. Congress should authorize and fund a large-scale longitudinal study to determine how the needs of people with disabilities are being met over time as the ADA is implemented.

In the short space of three years, the Americans with Disabilities Act had earned a positive review. Since the publication of this first report, some progress has been made in implementing the recommendations detailed above. However, the National Council on Disability continues to pursue the full adoption of these recommendations. As will be evident in the next few pages, the need for attention to these recommendations remains to this day.

# *THE AMERICANS WITH DISABILITIES ACT: WHERE WE ARE TODAY*

**In the year and one-half since the Council's first report was published, implementation of the ADA has gone forward and new issues have emerged. In order to gain a better understanding of these issues, the Council held two information gathering events during 1994. In February of 1994 the Council sponsored a national meeting of experts regarding progress in ADA implementation at the United States Senate. In August of 1994 the Council sponsored an ADA Roundtable in Seattle, Washington, that provided a wide variety of individuals at the local level with an opportunity to engage in a frank discussion of the law's impact to date.**

## National Meeting of Experts on the Americans with Disabilities Act

**At the national meeting of experts in February, participants asserted that the ADA has been a substantive success. ADA is taken seriously in America and throughout the world. However, throughout the day participants noted that accompanying this initial general success was a growing theme of "backlash", similar to that which occurred during the initial implementation of the Civil Rights Act in the 1960s. The principal expression of this backlash has been found in the charge of some opponents of the ADA that the Act constitutes an "unfunded mandate." This, of course, reveals a fundamental misunderstanding of the nature of the ADA. The ADA is, at its core, a civil rights law, grounded in the freedoms guaranteed in the Bill of Rights. As such, the rights and freedoms codified in the ADA should not be subject to a debate on their cost, any more than the rights of women, minorities, or religious groups. This fact was recognized in 1994 in the debate regarding "unfunded mandates" in the United States Senate. In the Committee Report accompanying S.993, *The Federal Mandate Accountability and Reform Act of 1994*, the Committee on Governmental Affairs stated the following:**

> ***The Committee believes that a number of areas should be properly excluded from the requirements of this Act. They include Federal legislation or regulation that: enforces individual Constitutional rights; establishes or enforces statutory rights to prohibit discrimination on the basis of race, religion, gender, national origin, or handicapped or disability status...The Committee recognizes the special circumstances and history surrounding the enactment and enforcement of Federal civil rights (including disability rights) laws. During the middle part of the 20th century, the arguments of those who opposed the national extension of basic equal rights, protection, and opportunity to all individuals were based primarily on States' rights philosophy or contention. With the passage of the Civil Rights Acts of 1957 and 1964 and the Voting Rights Act of 1965, Congress rejected that argument as false reasoning designed to thwart equal opportunity and to protect discriminatory,***

*unjust and unfair practices in certain parts of the country. The Committee therefore exempts Federal civil rights laws from the requirements of this Act.*[8]

**While this report language would seem to provide an appropriate analysis of the legal reasoning which would prohibit the consideration of cost as a fundamental determinant of the endowment and expression of civil rights, this legislation was not passed by the 103rd Congress prior to its adjournment. However, this in no way detracts from the validity of the analysis and it is important that this analysis be incorporated into future debate on this issue. Otherwise, it is likely that the future impact of the Americans with Disabilities Act will be dramatically diminished, thereby severely compromising the status of people with disabilities in society.**

**Throughout the day leaders from the disability rights community offered valuable insights regarding the implementation of the ADA and suggestions for the Council's future effort's in monitoring the ADA. Five major themes emerged from these spirited discussions:**

## Correct Current Misunderstandings Regarding the Americans with Disabilities Act

**There is currently a considerable amount of misunderstanding regarding the ADA. Perhaps the greatest single area of misunderstanding regarding the ADA is in the area of cost. The law itself requires that covered entities incur the costs of "reasonable accommodations" to make their facilities, programs, and services accessible to individuals with disabilities unless such accommodations pose an "undue hardship" on the entity. Given this two-part test, there is obviously room for discussion regarding both what is "reasonable" and what constitutes an "undue hardship". Thus, there is no concrete requirement that covered entities must absolutely make every accommodation requested by every individual with a disability. Furthermore, it has been found that reasonable accommodations often do not require a great deal of expense. For example, the Job Accommodation Network sponsored by the President's Committee on Employment of People with Disabilities reports that based on its national data bank, *using the average (mean) cumulative figures, for every dollar spent to make an accommodation, the company got $15.34.*[9] In addition, a recent study based on the experience of Sears, Roebuck, and Company in making reasonable accommodations reported that the average accommodation cost the company $121.00. The study also**

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[8] U.S. Senate Committee on Governmental Affairs. (August 10, 1994). *Report to Accompany S.993, The Federal Mandate Accountability and Reform Act of 1994.* 103rd Congress, 2nd Session. Calendar No. 551 (Report 103-330). Section 4.

[9] Job Accommodation Network. (1994). *Accommodation Benefit/Cost Data.* Morgantown, WV: Author. (p.4).

reported that 69% of accommodations cost nothing, 28% cost less than $1,000, and only 3% exceeded $1,000.[10] These data are in general agreement with the overall data reported by the President's Committee on Employment of People with Disabilities. Thus, the idea that compliance with the ADA will cause great financial burdens to covered entities is not supported by either the provisions of the law itself or by practical experience to date in implementing the law.

## Improve Educational Efforts Regarding the Americans with Disabilities Act

There is a need for improved public relations and education regarding the ADA and its actual requirements. During the national meeting of experts, participants noted that there is a lack of information both within the general public and the disability community itself regarding the ADA. A recent Harris poll indicated that only 40% of people with disabilities had any substantial knowledge of the ADA. Given this fact, it is not surprising that the early implementation of the ADA has been somewhat uneven.

During the meeting, experts noted several key points in the area of public relations and education. Primary among these was the fact that ADA "success stories" need to be widely publicized. Persons with disabilities, covered entities, and the general public need to know how to successfully implement the ADA in their own local communities and industries. Fortunately, there are a great number of success stories to draw upon. Unfortunately, few of these stories are ever communicated to those who could benefit from this knowledge. Many potential fears regarding compliance could be greatly reduced through the communication of this often common-sense information. As Justin Dart, Jr. observed: *An architect might tell a company that they need to tear out their plumbing and install a new drinking fountain to accommodate a worker with a disability. But the person with a disability might respond by asking the company to install a five-dollar cup dispenser instead.* Clearly, the dissemination of information regarding positive examples of ADA implementation would hold much promise in speeding up the process of compliance and in reducing the number of complaints under the Act. In this regard, participants had several suggestions:

(a). There should be an on-going, national effort to disseminate ADA success stories.

(b). Examples of successful compliance should be disseminated by enforcement agencies such as the Department of Justice in order to encourage voluntary compliance.

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[10] Blanck, P. (1994). *Communicating the Americans with Disabilities Act -- Transcending Compliance: A Case Report on Sears, Roebuck, and Co.* Washington, DC: Annenberg Washington Program.

**(c). There is a particular need to provide persons with disabilities and the general public with *basic* information regarding the ADA.**

**(d). This basic information campaign as well as other ADA-related information efforts should be produced in accessible formats and should also be available in several languages.**

**(e). Particular outreach efforts should be made to ensure that individuals from racial, cultural, and ethnic minorities and youth are informed of the ADA's provisions. There is a national need for outreach to minority communities, people with low incidence disabilities, and people living in rural areas.**

**In its 1993 report, *Meeting the Unique Needs of Minorities with Disabilities: A Report to the President and the Congress*[11], the National Council on Disability detailed the difficulties experienced by members of minority groups who had disabilities in receiving information and services. More specifically, the Council found:**

***The ADA holds great promise for minority persons with disabilities, but the promise will be realized only if specific efforts are made for outreach, education, and removal of barriers in minority communities.* (p.4).**

**Unfortunately, this outreach has yet to occur to any great extent. Participants also noted that persons with low-incidence disabilities and persons who live in rural areas also had significant informational needs regarding the ADA. Once again, a possible solution in this area might be through providing resources to grassroots organizations which serve minority communities, organizations of and for persons with low-incidence disabilities, and to organizations serving rural areas.**

**(f). The education of philanthropic organizations could yield support for continued public education regarding the successful implementation of the Act.**

## Clarify and Strengthen the Legal Framework Surrounding the Americans with Disabilities Act

**Meeting participants stressed that at present legal actions involving the Americans with Disabilities Act remain largely uncoordinated. Better coordination of legal activities in order to establish a clear framework for interpretation of the ADA through case law.**

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[11] National Council on Disability. (1993). *Meeting the Unique Needs of Minorities with Disabilities: A Report to the President and the Congress.* Washington, DC: Author.

**As there is no specific clearinghouse for the dissemination of information on legal activities regarding the ADA, there is a danger that the development of an authoritative body of case law regarding the Act will be slowed. Several suggestions were offered to remedy this situation, including the establishment of a national clearinghouse or other information bank regarding ADA cases or a national conference which would present information and training in the area of case law on the ADA.**

**Participants noted that the ADA was too big to be implemented solely from Washington, DC, but no consensus was reached as to the best strategy for ensuring evenness in implementation across the nation. The continuing lack of affordable legal resources for people with disabilities was cited as one of the major factors impeding the proper implementation of the ADA.**

## Provide Resources and Coordinate Federal Efforts to Enforce the Americans with Disabilities Act

**While participants were generally supportive of the intent of various Federal agencies to enforce the provisions of the ADA to date, they noted that there was a significant frustration in the disability community regarding the backlog of complaint processing at the Federal level. While certain agencies such as the Equal Employment Opportunity Commission have since begun to explore methods by which they might streamline their processing of complaints, it is clear that additional resources are needed, if the law is to be effectively enforced.**

**Participants expressed particular concern with the Department of Transportation, stating that it had bypassed the usual rulemaking process in issuing its definition of "unduly burdensome" accommodations, that it had missed deadlines in the law, and that it gave the appearance of being extremely lenient in issuing waivers to covered entities in order to effectively exempt these entities from various provisions in the Act. In addition, participants expressed concern as to whether the Department would utilize the findings and recommendations of the Congressionally-mandated independent study on the accessibility of Over the Road Buses conducted by the Congressional Office of Technology Assessment as the actual basis for its upcoming *Notice of Proposed Rulemaking* concerning the accessibility of Over the Road Buses.**

**On a more positive note, participants stated that the Federal Communications Commission had been effective in implementing the regulations under its jurisdiction in a timely and effective manner. The next challenge in this area will be ensuring that people with disabilities have access to the "information superhighway" which will revolutionize the field of telecommunications.**

## Provide More Technical Assistance

Technical assistance efforts designed to promote ADA implementation need to be more targeted and directed toward a wide variety of entities. Participants stated that the best way to increase knowledge of the Americans with Disabilities Act among people with disabilities would be to target this information toward grassroots organizations of and for people with disabilities. In many instances, it might be feasible to provide these organizations with resources to educate their membership and the community at large.

Participants also stated that technical assistance was needed in the education of architects and design professionals so that they might be able to include accessibility features from the earliest possible phases of their work, thereby obviating the need for costly retrofitting later.

Finally, meeting participants suggested that better coordination was needed in the area of technical assistance both among government agencies involved in these activities and private sector entities involved in the delivery of technical assistance. Several participants suggested that, given the marked variability in the quality of technical assistance materials which have been developed in the private sector in response to the ADA, some form of certification or approval by agencies charged with enforcement of the ADA might be advisable. This would help to ensure the accuracy of these materials and to build trust among covered entities.

## Summary of the National Meeting of Experts on the Americans with Disabilities Act

The overriding message emanating from the national meeting of experts was that the Americans with Disabilities Act was a law of vital importance to Americans with disabilities and that its overall implementation was proceeding well. However, there were significant informational gaps concerning the Act, its lower-than-predicted costs, and emerging case law. These informational gaps were particularly wide in minority communities, among people with low-incidence disabilities, and in rural areas. Efforts to streamline the processing of complaints and to direct sufficient resources to respond in a timely fashion to these complaints need to be undertaken. In addition, more resources need to be devoted to legal services in order to ensure that people with disabilities can access the rights and protections of the Act. Finally, further technical assistance is needed to enable people with disabilities and covered entities to implement the law in an effective manner.

## Roundtable Discussion on the Implementation of the Americans with Disabilities Act

On August 23, 1994, the National Council on Disability sponsored a roundtable discussion on the implementation of the Americans with Disabilities Act as part of its quarterly meeting in Seattle, Washington. At the beginning of the day, leaders from Federal agencies with ADA implementation responsibilities presented data on specific areas under their purview to the Council and to approximately 200 individuals in attendance. After this, individuals representing various local and State agencies as well as employers from Seattle and throughout the State of Washington described their efforts to take a positive approach to the implementation of the ADA. Attendees were then invited to share their views regarding the implementation of the ADA to date.[12]

During the course of the day, information was gathered on Title I - Employment, Title II - Public Services, Title III - Public Accommodations and Services Operated by Private Entities, Title IV - Telecommunications. In addition, the area of Transportation was given specific attention. Finally, information regarding strategies to implement the ADA at the local and State level were described. Information from each of these areas will be summarized below.

### Title I - Employment

As of August, 1994, the Equal Employment Opportunity Commission (EEOC) had received almost 30,000 complaints regarding employment discrimination under the ADA. Of these, the largest percentages by disability category were as follows: approximately 20% were from individuals with back impairments, 13% from individuals with neurological impairments, and 10% from individuals with emotional or psychiatric impairments. Half of the complaints alleged discharge based on discrimination, 25% alleged failure to provide reasonable accommodations, and 11% alleged failure to hire based on discrimination. Of the total number of charges, approximately 46% have been resolved in some fashion, 34% through a finding of "no cause". As of August, 1994, 26 cases were in court, with approximately 200 others headed to court.

During the Roundtable, participants identified the following issues as needing attention in order to better implement Title I:

- More resources are necessary for enforcement.
- More guidance is needed regarding the relationship of Title I to Worker's Compensation provisions.

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[12] Please refer to Appendix B for the Roundtable Agenda.

- Clarification is needed regarding the relationship of the ADA to union contracts. For example, if job reassignment constitutes a "reasonable accommodation" yet conflicts with seniority provisions in a collective bargaining agreement, which takes precedence?

- More information is needed regarding chemical sensitivity and environmental illness issues.

- More information is needed on accommodating people with mental health issues and cognitive disabilities in the workplace.

- Medical professionals need to learn more about "essential job functions" when evaluating individuals' ability to perform work.

- The private sector needs more education regarding the provisions of Title I.

- Consideration should be given to using Medicaid to pay for diagnostic testing.

- A more precise definition is needed for "specific learning disabilities".

- The relationship of the ADA to the Family Medical Leave Act should be explored.

## Title II - Public Services

As of August 1994, the Justice Department had received approximately 2,400 complaints under Title II of the ADA. Slightly over half of these complaints were referred to seven other Federal agencies for investigation by programs under their jurisdiction, while 1,100 involving issues such as law enforcement, courts, and city and town buildings were retained by the Justice Department for investigation. To date, most of the complaint investigations have led to informal settlements involving voluntary compliance by covered entities.

Participants at the Roundtable made the following suggestions for improving compliance with Title II:

- ♦ More exploration needs to take place on meeting the needs of individuals with "invisible" disabilities.

- ♦ More resources need to be directed at providing legal services to low- and middle-income people with disabilities.

- ♦ Police departments should make greater use of sign language interpreters during arrest processes with deaf individuals.

- ♦ Procedures for obtaining interpretative services for non-English language deaf people or those who require tactile interpreters need to be improved.

- ♦ More "front-end" planning needs to take place in order to avoid the costs of retrofitting facilities for access.

- ♦ Training needs to occur at the highest levels of an organization, if real change is to occur.

Title III - Public Accommodations and Services Operated by Private Entities

As of August 1994, the Justice Department had received approximately 2,600 complaints regarding Title III of the ADA. Of these, approximately 63% involved the alleged failure to remove barriers in existing facilities which were "readily achievable", 20% involved the failure to provide "auxiliary aids", and another 10% involved the failure to modify policies that precluded or impaired the participation of people with disabilities in programs. Thus far, there have not been a significant number of complaints regarding new construction and alterations.

Participants in the Roundtable offered the following suggestions for improving compliance with Title III:

- ♦ Clarification is needed over the number of van parking spaces that should be provided at existing facilities.

- ♦ Clarification is also needed between the requirements of the law for barrier removal versus new construction.

- ♦ Building officials need basic training regarding Title III requirements.

♦ Businesses need to provide consistent accommodations such as materials in alternative formats for people who are blind, interpreters for people who are deaf, etc., rather than the present situation in which either no accommodations are readily available or the quality varies widely from one setting to another.

♦ Businesses should hire sign language interpreters on their regular staff, just as they hire a certain number of Spanish speaking individuals (etc.) to meet customers' needs.

♦ Doctor's offices and clinics need to utilize assistive listening devices.

♦ Clarification is needed in order to ensure that covered entities understand that they are required to make reasonable accommodations under Title III, no matter how large or small their business is or how many employees they have.

♦ There should be a qualification standard uniformly applied to sign language interpreters.

♦ Consideration should be given to the development of a certification program for ADA consultants in order to improve quality in these services.

♦ People with disabilities themselves should be included in judgments concerning what constitutes compliance.

## Title IV - Telecommunications

Participants in the Roundtable concerning Title IV expressed general satisfaction with progress to date in implementing the requirements of the ADA related to the provision of relay services. They also discussed broader telecommunications and information access issues, such as access to the "information superhighway". Noting that, in general, there is a tremendous gap between the State of technology and the State of access standards to technology, they offered the following suggestions:

♦ Software developers need to ensure that new programs and products are accessible for people with disabilities. For example, the rapid growth of icon-driven programs (such as

Windows) is effectively shutting blind and visually impaired individuals out of their jobs.

♦ The growth of voice mail services has far outstripped the growth of TDD operators, thus producing significant barriers to people with hearing and speech impairments. An industry-wide standard for a pause control system is needed.

♦ Technology is available to allow devices such as automatic teller machines (ATMs) to "talk". This technology needs to be used much more extensively than at present.

♦ The Justice Department or the Access Board should develop standards for making information systems kiosks more accessible.

♦ Long distance telephone carriers should be more flexible in allowing TDD callers to transfer from one service to another.

♦ The Federal Communications Commission (FCC) should ensure that in selling licenses for communications radio frequencies for personal telephones, cellular, telephones, etc. that they do not interfere with frequencies reserved for FM loops used by people who are hard of hearing.

♦ The FCC needs to issue rules regarding hearing aid compatibility telephones.

♦ Consideration should be given to the development of rules governing the confidentiality of information resulting from communication via message relay systems.

## Transportation

As of August, 1994, the Department of Transportation had received over 500 complaints regarding the transportation requirements of the ADA. The most common complaints come from people with disabilities who have been refused transportation, people who experience discrimination in receiving transportation services, a lack of accessible key stations, and a lack of curb cuts. Department officials have been informed by covered entities that timelines have been or will be missed in important areas: the July 1993 compliance date for accessibility of key stations has been missed in many areas, and the

**July 26, 1994 compliance date for one accessible car per train has also been missed in many instances.**

**During the Roundtable, participants offered the following suggestions for improving compliance with the ADA:**

- **The Secretary of Transportation should accept the findings of the Congressional Office of Technology Assessment's study regarding the accessibility of over-the-road buses and issue rules consistent with this Congressionally mandated study.**

- **Clarification is needed on whether repaving roads constitutes an alteration which triggers the requirement to install curb cuts.**

- **Extensive training is required for the staff of paratransit systems regarding the accurate and timely processing of requests for services.**

- **Federal standards for access to ferries and other vessels should be developed.**

- **Clarification is needed regarding which entities are responsible for the accessibility of bus stops.**

## Seattle and the State of Washington: Progress in Implementing the Americans with Disabilities Act

***Washington State has moved to fully implement the Americans with Disabilities Act because we acknowledge the right of each citizen to participate in state services, programs and opportunities free from discrimination. We have found that implementation costs little and can result in dramatic improvements in the lives of people with disabilities. Further, by enabling people with disabilities to be self-sufficient and to obtain gainful employment, ADA can result in reduced welfare and other program expenditures.***

**- Governor Mike Lowry**

**During the ADA Roundtable, Members of the National Council on Disability as well as nearly 200 attendees had the opportunity to hear from a number of individuals who were involved with ensuring the successful implementation of the Americans with Disabilities Act in Seattle and throughout the State of Washington.**

**In the opening session, Mayor Norman Rice of Seattle spoke eloquently regarding the City of Seattle's efforts to adopt a positive approach to the full implementation of the ADA:**

> ***As everyone in this room knows, the Americans with Disabilities Act is the long awaited and long overdue legislation that finally gives Americans with disabilities a guarantee of the most basic civil rights. As I'm sure you are also aware, passing the ADA was only the beginning. The real work lies in implementing and enforcing and tearing down myths and the stereotypes so prevalent in our society. We in Seattle...can...take pride in our city's efforts to make itself accessible to people with disabilities. Our overall goal is to go beyond simply making access. We want people to have a truly comfortable, barrier-free environment.***

**Noting that the City of Seattle had established ordinance prohibiting discrimination based on disabilities prior to the passage of the ADA, Mayor Rice discussed several efforts the City had made toward the active implementation of the ADA and some of the results of these efforts.**

- **The city has taken steps to begin increase the hiring of qualified workers with disabilities.**
- **The Mayor appointed two city-wide ADA coordinators. One of these coordinators works specifically on implementation and the other addresses public accommodations.**
- **Seattle has established an ADA Citizens Advisory Committee to evaluate and prioritize access issues.**
- **The Seattle Public Library has opened its entire collection to patrons who have visual impairments by providing assistive technology. The library also has a coordinator for services for patrons who are deaf or hard of hearing.**
- **The city has hired advocates for disability-related concerns within the city government to provide a link to the community at large.**
- **As part of its approach to the issue of managing growth and maintaining a high quality of life for its citizens, the city has included accessibility features in its plans to increase and improve housing and public transportation.**

**Mayor Rice noted that there is still much work to do. However, he stated his belief that Seattle is up to the challenge, and welcomed the future involvement of all organizations**

organizations in making the ADA work in Seattle. In his concluding remarks, Mayor Rice offered the following observation:

> *The true test of a just society is whether everyone is able to participate. Everyone has the right to be heard, and each of us must be empowered to give a voice to our particular needs and concerns.*

Later in the day, representatives from various State agencies involved in the implementation of the ADA as well as employers had the opportunity to share information regarding efforts to positively implement the ADA in the State of Washington and in the State's employment sector.

Mary McKnew, ADA coordinator in the Governor's Office, discussed Statewide compliance activities under Title II of the ADA and the role that the Governor's Office had played in that area. One of the first steps taken in response to the ADA in the Governor's Office was the issuance of Executive Order 9303, which clarified the implications of the ADA to State agency directors in such diverse agencies as Fisheries and Wildlife, Agriculture, Transportation, etc. An ADA coordinator was appointed within each State agency to serve as the central point of contact, to perform agency self-evaluations, and to develop transition plans for submission to the Office of Financial Management. In addition, agency directors were required to hold meetings in barrier-free locations, provide meeting materials in alternative formats, and ensure that assistive listening devices and interpreters were available. The Executive Order also required that public transportation should be made available (in effective alternative means as necessary), and that nondiscrimination be the rule in employment.

In order to increase public awareness of the ADA, the Governor's Office ran advertisements, put up posters, and established a telephone line and point of contact for written inquiries. In addition to the objective of increasing public awareness, these activities also provided a vehicle for the public to inform the Governor's Office of difficulties they might be having in trying to access State services.

A Statewide ADA Task Force was established, with 75 percent of the members being people with disabilities, whether citizens or State employees. The Task Force, which also included representatives of different key State agencies, organized itself around various issues such as communication barriers, employment, facilities access, etc. The Task Force identified broad barriers that people were experiencing across the 135 State agencies as well as the higher education programs supported by the State government and also considered the best means of educating the over 40,000 employees of the State of Washington.

One example of how the State has used information arising from this education and outreach effort is found in the State's establishment of a braille center that contracts with the State printer's office. Previous to the establishment of this braille center, State

agencies were often bewildered when citizens requested information in braille. Today, the turnaround time for such a request is often 24 hours. At the time of the roundtable, the State was in the process of developing a guidebook listing each State agency, its central contact for requests for materials in alternate formats, tape or braille.

The State legislature appropriated funds for operating expenses and capital improvements in response to the ADA. Some of these funds were used by the Department of Personnel to hire a "reasonable accommodations" expert who is available to agency managers to answer questions, identify and locate sources for acquiring accommodations, etc. The Department of Personnel also hired a staff trainer knowledgeable of the provisions of the ADA. This trainer works in coordination with other ADA trainers located in various key departments in order to promote compliance with the ADA. State employees are provided training on topics such as disability awareness, how to use accessible telephone equipment such as a TDDs, and a wide variety of other disability-related topics. Within the Department of General Administration, there is a coordinator for ensuring that State agencies have accessible services and equipment. Equipment such as assistive listening devices can be loaned out to State agencies requiring their use, thereby leading to the most cost-effective use of this equipment. Through another effort, the Department of General Administration is attempting to increase access to public meetings, hearings, and conferences sponsored by the State. This involves training State employees involved in planning for such events in areas such as architectural access.

In the State of Washington, the Governor's Committee on Disability Issues and Employment is the recipient of a grant from the National Institute on Disability and Rehabilitative Research establishing the Northwest Disability Business Technical Assistance Center. The Center provides information and referral, technical assistance, and training on the ADA to people with disabilities, businesses, public accommodations, and the public. The Center is one of 10 regional centers that cover the country for this purpose. Its region includes Alaska, Washington, Idaho and Oregon. Toby Olson, who directs both the Governor's Committee on Disability Issues and Employment as well as the Center, reported that early on, the Center developed a cadre of Statewide networks, organizations, and broad-based coalitions of organizations interested in the ADA. Resources were deployed in order to develop capacities for effective ADA implementation throughout the region. As training was conducted in the States, other efforts were launched in order to build capacity at the local level.

For example, in Alaska the Center has fostered a regional mentor approach. Beginning with an initial intensive training program for 24 individuals, 12 were recruited to establish a network across the State. This network accomplishes its work through monthly telephone conference calls to share technical information, new developments in the application of the Act. Members then recruit apprentices in their communities who can share this information with others all across the State. In Washington State, the State network has a Rural Concerns Subcommittee that has traveled to rural

communities throughout the State. Through advance publicity, the subcommittee has been able to attract the participation of people in rural areas who are interested in disability issues, bring them together in meetings, and develop strategies for ADA implementation.

Finally, roundtable participants heard from employers in the State of Washington who had taken proactive steps to implement increased access to employment for persons with disabilities. Ms. Annella Zamora of McCaw Cellular Communications reported that her company had developed a broad base of employees with disabilities. She stated that McCaw had developed a diverse group of employees, as it has always been part of the McCaw culture to go into the community and employ persons with different disabilities, looking at person's skills first. The ADA had proven helpful in lending more support and accelerating the pace of this process.

Mr. Danny Delcambre, owner of the Ragin' Cajun Restaurant in Seattle, reported that he had established his restaurant in 1993. Given his own hearing disability, he chose to hire people skilled in sign language. In this effort, he was provided with assistance from the State Department of Vocational Rehabilitation. He was also able to obtain tax credits for his business.

Mr. Joey Vigil, of the Naval Undersea Warfare Division, reported that his Division had embarked upon an aggressive program to hire people with disabilities eight years ago. At that time, there were over 4,000 employees, 95 of whom had disabilities. The hiring effort received guidance from an Advisory Committee for Employees with Disabilities, which provided direct access to the commanding officer. Fifty percent of the Committee was made up of disabled employees, and other members included top level managers, as well as a facility engineer (for advice on reasonable accommodation). Deaf employees formed a Deaf Employees Advisory Forum. At that time, the Division worked with approximately 47 different State and private agencies. Members of the Committee participated in recruiting trips, through which the Division hired engineers and scientists, and other professionals. As a result of this and related efforts, the number of employees with disabilities rose from 95 to 578. Currently, employees with disabilities make up 17% of the workforce. The current average hourly wage for employees with disabilities at the Division is $14.00/hour.

Mr. Vigil credited the Division's adoption of a Total Quality Leadership approach to management as one of the key factors contributing to the success of employees with disabilities. Training and upgrading of skills are constantly emphasized in order to ensure that employees not only maintain their skills, but develop new ones to meet new challenges in the workplace.

Mr. Norm Tate, of the Auburn office of the Teleservice Center for the Social Security Administration described his office's success in hiring and retaining employees with disabilities. Mr. Tate reported that the Center has been in operation for approximately

five years. From the beginning, a goal was to hire people with disabilities. At present, the Center employs approximately 500 employees, 30% of whom have disabilities. Beyond the hiring process, the Center has provided employees with disabilities with career development opportunities, so that at present, several are moving up the management line.

In this effort, the Center received assistance from the State Division of Vocational Rehabilitation, agencies serving people who are blind or visually impaired, and many other agencies. In addition to the assistance provided by agencies, Mr. Tate cited *true commitment at the top* as a key factor in leading to these positive outcomes.

The Council was encouraged by the efforts both within the City of Seattle and the State of Washington to adopt a positive approach to the implementation of the Americans with Disabilities Act. Beyond the impressive gains that have been made in access to the physical, communications, and employment environments, the strength of the partnerships that have been formed will greatly assist in the continued smooth implementation of the Act.

Summary of the Americans with Disabilities Act Roundtable Discussion

The general conclusion from the Roundtable was that implementation of the ADA was proceeding reasonably well. Several speakers stressed the fact that while further training, clarification, and (in some instances) regulatory actions might be required, the ADA itself was sound and should not be amended. In spite of initial fears on the part of some that the ADA would be very expensive or would take great efforts to implement, early implementation has been achieved in many areas in a cost effective and efficient manner. This has been particularly true in organizations which have a strong commitment to their communities:

> *As I've said, it's always been a part of [our company's] culture to go into the community and employ people with disabilities, to look at the skill set first and, secondarily, to look at the disability....What happened with the ADA, I believe, is that we were lent more support in moving more quickly forward....To date, we have not realized any tax breaks or incentives. I think it was corporate responsibility to move forward with this without any of the incentives.*

Another participant put it this way:

> *Incentives? I'll buy you lunch: that's a good incentive!*

Finally, another participant described the importance of leadership in implementing needed organizational change:

*...unless you have true commitment at the top, you don't have anything. I don't think amending the ADA will achieve that...the need is, very simply, for a paradigm shift.*

## *CONCLUSIONS*

**In its early implementation, the Americans with Disabilities Act has begun to create this paradigm shift in America. The goals of the ADA — for equality of opportunity, full participation, independent living, and economic self-sufficiency — are beginning to shape our national culture. An example of this is found in the partnerships which have emerged between public and private sector entities in places such as the City of Seattle and the State of Washington in order to foster the smooth implementation of the Americans with Disabilities Act. These partnerships provide positive examples of how adaptive change is occurring.**

**The conclusions of this brief summary report echo those expressed in the Council's two earlier reports on the implementation of the Americans with Disabilities Act[13]. What is needed to improve upon the implementation of the Americans with Disabilities Act is greater public awareness, further education and clarification regarding the provisions of the law, and the appropriate resources to both encourage voluntary compliance and to ensure effective enforcement. A recent study by the General Accounting Office also confirms these conclusions:**

> ***Overall, we observed steady improvement in both accessibility and awareness during the initial 15 months that the ADA was in effect. However, enough areas of concern remain to suggest a need for continuing educational outreach and technical assistance to businesses and government agencies covered by the act and continued monitoring by the Congress.*** **(p.2).**
>
> ***...while accessibility for persons with disabilities is steadily improving, there remains a need for continuing educational outreach and technical assistance for businesses and government agencies covered by the ADA and therefore the continued attention of a watchful Congress.*** **(p.15).[14]**

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[13] National Council on Disability. (1993). *ADA Watch -- Year One: A Report to the President and the Congress on Progress in Implementing the Americans with Disabilities Act*. Washington, DC: Author.

National Council on Disability. (1993). *Furthering the Goals of the Americans with Disabilities Act Through Disability Policy Research in the 1990s: Summary of Proceedings*. Washington, DC: Author.

[14] General Accounting Office. (1994). *Americans with Disabilities Act: Effects of the Law on Access to Goods and Services*. Washington, DC: Author.

**The present report contains many suggestions for how the Federal government might improve its efforts to ensure that the implementation of the Americans with Disabilities Act goes forward in a manner which guarantees the freedoms established and protected under this landmark civil rights legislation. Improvements in implementation are essential to guaranteeing that the future of America is characterized by equality of opportunity, full participation, independent living, and economic self-sufficiency for *all* citizens. The National Council on Disability remains firmly committed to making the Americans with Disabilities Act work for all citizens, thereby ensuring equal access to the American dream.**

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## Appendix A
## A Brief Description of the Americans with Disabilities Act

### ADA Requirements

An estimated 49 million Americans with physical or mental impairments that substantially limit daily activities are protected under the ADA. These activities include working, walking, talking, seeing, hearing, or caring for oneself. People who have a record of such an impairment and those regarded as having an impairment are also protected. The ADA has the following five titles:

- Title I — Employment
- Title II — Public Services (including Public Transportation)
- Title III — Public Accommodations and Services Operated by Private Entities
- Title IV — Telecommunications
- Title V — Miscellaneous Provisions

The following is a brief summary of some of the major requirements contained in the ADA statute. To determine all of the requirements that a covered entity must satisfy, it is necessary to refer to the regulations, guidelines, and/or technical assistance materials that have been developed by the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the Department of Transportation (DOT), the Federal Communications Commission (FCC), and the Architectural and Transportation Barriers Compliance Board (the Access Board). In addition, the Internal Revenue Service (IRS) has developed regulations on the tax relief available for certain costs of complying with the ADA, such as small business tax credits.

### Title I — Employment

Title I of the ADA prohibits discrimination in employment against people with disabilities. It requires employers to make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee, unless such accommodation would impose an undue hardship on the employer. Reasonable accommodations include such actions as making worksites accessible, modifying existing equipment, providing new devices, modifying work schedules, restructuring jobs, and providing readers or interpreters.

Title I also prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such tests or criteria are shown to be job-related and consistent with business necessity. It also bans the use of pre-employment medical examinations or inquiries to determine if an applicant has a disability. It does, however, permit the use of medical examinations after a job offer has been made if the results are kept confidential, all persons offered employment in the same job category are required to take them, and the results are not used to discriminate.

Employers are permitted, at any time, to inquire about the ability of a job applicant or employee to perform job-related functions. Under the ADA, the employment provisions took effect on July 26, 1992, for employers with 25 or more employees, and will take effect on July 26, 1994, for employers with 15 or more employees. As required, the EEOC issued its regulations by July 26, 1991.

**Title II — Public Services**

Title II of the ADA requires that the services and programs of local and State governments, as well as other non-Federal government agencies, are accessible to people with disabilities. Regulations from the Attorney General's office at DOJ were issued on July 26, 1991, in compliance with the ADA.

In addition, Title II seeks to ensure that people with disabilities have access to transportation. All new buses must now be accessible. Transit authorities must provide supplementary paratransit services or other special transportation services for individuals with disabilities who cannot use fixed-route bus services, unless this would present an undue burden.

In the area of rail transportation, the ADA requires that all new rail vehicles and all new rail stations must be accessible. In addition, existing rail systems must have one accessible car per train within five years of enactment. Amtrak must make all of its existing stations accessible within 20 years. Key stations of subway systems and other commuter rail systems must generally be accessible within three years. Regulations from the Secretary of DOT were due on July 26, 1991, but were somewhat delayed.

**Title III — Public Accommodations**

Public accommodations include the broad range of entities that affect commerce, including sales, rental, and service establishments; educational institutions; recreational facilities; and social service centers. The ADA prohibits the use of eligibility criteria that screen out or tend to screen out individuals with disabilities, unless necessary for the delivery of goods and services. It also requires public accommodations to make reasonable modifications to policies, practices, and

procedures, unless those modifications would fundamentally alter the nature of the services provided by the public accommodation.

Title III also requires that public accommodations provide auxiliary aids necessary to enable persons who have visual, hearing, or sensory impairments to participate in the program, but only if their provision will not result in an undue burden on the business. Thus, for example, a restaurant would not be required to provide menus in braille for blind patrons if it requires its waiters to read the menu. The auxiliary aid requirement is flexible. A public accommodation may choose among various alternatives as long as the result is effective communication.

With respect to existing facilities of public accommodations, physical barriers must be removed when it is "readily achievable" to do so (i.e., when it can be accomplished easily and without much expense). Modifications that would be readily achievable in most cases include ramping of a few steps. However, all construction of new facilities and alterations of existing facilities in public accommodations, as well as in commercial facilities such as office buildings, must be accessible to people with disabilities (except that elevators generally are not required for facilities that are less than three stories high or have less than 3,000 square feet per story).

Regulations on public accommodations and commercial facilities from the Attorney General's office were issued on July 26, 1991. Title III also addresses transportation provided by private entities, and regulations on this component were issued by the Secretary of DOT on September 6, 1991.

### Title IV — Telecommunications

Title IV of the ADA amends the Communications Act of 1934 to require that telephone companies provide telecommunication relay services. The relay services must permit speech- or hearing-impaired individuals who use TDDs or other non-voice terminal devices opportunities for communication that are equivalent to those provided to other customers. Regulations were issued by the FCC on August 1, 1991.

### Title V — Miscellaneous Provisions

This title addresses such issues as the ADA's relationship to other laws including the Rehabilitation Act of 1973, requirements relating to the provision of insurance, regulations by the Access Board, prohibition of State immunity, inclusion of Congress as a covered entity, implementation of each title, promotion of alternative means of dispute resolution, and provision of technical assistance.

## Appendix B
## List of Participants in the National Meeting of Experts on the Americans with Disabilities Act

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**February 10, 1994**

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**Mr. Robert Muller**
**NCD Council Member**

**Dr. George Oberle**
**NCD Council Member**

**Mrs. Mary Raether**
**NCD Council Member**

**Mr. Edward P. Burke**
**NCD Acting Executive Director**

**Ms. Billie Jean Hill**
**NCD Staff**

**Mr. Mark Quigley**
**NCD Staff**

**Ms. Ramona Lessen**
**Assistant to the Chairperson**

## Appendix C
## ADA Roundtable Agenda

**National Council on Disability**
**ADA Roundtable**
**August 23, 1994**

**Westin Hotel**
**1900 Fifth Avenue**
**Seattle, WA 98101**

**Agenda**

| | |
|---|---|
| 9:00 - 9:15 | ) The Administration's Commitment to Furthering of the Americans with Disabilities Act — Michela Alioto, Deputy Assistant for Domestic Policy, Office of the Vice President |
| 9:15 - 9:30 | ) Implementation of the Americans with Disabilities Act in the Seattle Area — The Honorable Norman Rice, Mayor of Seattle |
| 9:30 - 9:45 | ) Summary of Issues from the Council's National Meeting of Experts on the ADA — Marca Bristo |
| 9:45 - 10:30 | ) Panel I<br>) Justice Department — Liz Savage<br>) EEOC — Peggy Mastroianni |
| 10:30 - 10:45 | ) Break |
| 10:45 - 11:30 | ) Panel II<br>) President's Committee on the Employment of People with Disabilities — Richard Sheppard<br>) Department of Transportation — Susan Schruth |
| 11:30 - 12:00 | ) Overview of ADA-Related Issues in the State of Washington/Northwest Region — Sue Ammeter (Washington State Governor's ADA Project) |
| 12:00 - 1:30 | Lunch (on your own) |

| | |
|---|---|
| 1:30 - 4:30 | ADA Implementation: A Local/Regional Perspective (Introduced by Bonnie O'Day) |
| 1:30 - 2:45 | ) Panel III: Examples of Promising ADA Implementation Strategies — Sue Ammeter |
| 2:45 - 4:00 | ) Working Group Sessions: Improving the Implementation of the ADA:<br>) Employment<br>) Public Services<br>) Transportation<br>) Public Accommodations and Services Operated by Private Entities<br>) Telecommunications |
| 4:00 - 4:30 | ) Summary of Working Group Sessions |
| 4:30 - 6:00 | General Meeting Between Representatives from the Federal Government and Roundtable Participants Concerning Future ADA Implementation |

## Appendix D
## Statistical Information on the ADA as of September 30, 1994

**As part of its follow-up to the ADA Roundtable held in Seattle, WA on August 23, 1994, the National Council on Disability requested Federal agencies that had participated in the Roundtable to provide summary statistics on their ADA-related charges and complaints as of September 30, 1994. This information is as follows:**

**Equal Employment Opportunity Commission**

**As of September 30, 1994, the Equal Employment Opportunity Commission reported the following data regarding charges it had received under the ADA:**

**Cumulative Charge Data for 7/26/92 — 9/30/94**

**Total ADA charges received during reporting period: 34,877.**

**Impairments Cited By Frequency**

| Impairments Most Often Cited | Number | Percentage of Total |
|---|---|---|
| | | |
| Back Impairments | 6,879 | 20% |
| Neurological Impairments | 4,314 | 12% |
| Emotional/Psychiatric Impairments | 3,913 | 11% |
| Extremities | 2,407 | 7% |
| Heart Impairments | 1,639 | 5% |
| Diabetes | 1,238 | 4% |
| Substance Abuse | 1,233 | 4% |
| Hearing Impairments | 1,094 | 3% |
| Vision Impairments | 1,035 | 3% |
| Blood Disorders | 900 | 3% |
| Cancer | 883 | 3% |
| HIV (Subcategory of Blood Disorders) | 636 | 2% |
| Asthma | 612 | 2% |

Notes:
1. The filing a charge does not indicate whether the charge has merit.
2. This lists adds up to more than 100% because individuals can allege multiple violations.
3. Percentages are rounded off.

Number of ADA Lawsuits Filed by EEOC as of Oct. 1, 1994: 37

## ADA Violations Most Often Cited

| ADA Violations Most Often Cited | Number | Percentage of Total |
|---|---|---|
| | | |
| Discharge | 17,525 | 50% |
| Failure to Provide Reasonable Accommodation | 8,777 | 25% |
| Hiring | 3,860 | 11% |
| Harassment | 3,665 | 10% |
| Discipline | 2,526 | 7% |
| Layoff | 1,849 | 5% |
| Benefits | 1,330 | 4% |
| Promotion | 1,323 | 4% |
| Rehire | 1,285 | 4% |
| Wages | 1,195 | 3% |
| Suspension | 784 | 2% |

## Americans with Disabilities Act Resolutions of EEOC
## 7/26/92 — 9/30/94

| Type of Resolution | Number | Percentage of Total |
|---|---|---|
| | | |
| Administrative Closure | 7,593 | 44% |
| No Reasonable Cause | 6,111 | 36% |
| Merit Resolutions | 3,358 | 20% |
| Settlements | 1,174 | 7% |
| Withdrawal with Benefits | 1,723 | 10% |
| Unsuccessful Conciliations | 307 | 2% |
| Successful Conciliations | 154 | 1% |
| TOTAL RESOLUTIONS | 17,062 | 100% |
| TOTAL MONETARY BENEFITS = $30,391,755 | | |

Department of Justice

As of September 30, 1994, the Department of Justice reported that it had 1,400 on-going investigations regarding complaints filed under Title II of the ADA and 1,100 ongoing investigations regarding complaints filed under Title III of the Act.

Department of Transportation

Data from the Department of Transportation indicate the following:

| Reporting Year | Number of ADA Complaints Received |
|---|---|
| 1992 | 124 |
| 1993 | 234 |
| 1994 | 460 |
| TOTAL | 818 |

## Federal Communications Commission

**The Federal Communications Commission was assigned a very specific set of initial activities in the initial phases of the implementation of the ADA, most notably ensuring the development and deployment of a nationwide system of relay services for persons who are hearing or speech impaired by July 26, 1993. The Commission essentially met this deadline. Since that time, it has received five complaints. One involved interstate issues and was resolved by a final order. However, there is an appeal pending. The other four complaints involved intrastate issues, were referred back to the States, and were resolved at the State level.**

# APPENDIX E
## A Brief Description of the National Council on Disability

*Overview and Purpose*

**The National Council on Disability is an independent Federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The National Council was initially established in 1978 as an advisory board within the Department of Education (Public Law 95-602). The Rehabilitation Act Amendments of 1984 (Public Law 98-221) transformed the National Council into an independent agency.**

**The overall purpose of the National Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self sufficiency, independent living, and inclusion and integration into all aspects of society.**

*Specific Duties*

**The current statutory mandate of the National Council includes the following:**

* **Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by Federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act; and all statutes and regulations pertaining to Federal programs which assist such individuals with disabilities in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities;**

* **Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the Federal, State, and local levels, and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access for health care, and policies that operate as disincentives for the individuals to seek and retain employment.**

* **Making recommendations to the President, the Congress, the Secretary of Education, the Director of the National Institute on Disability and Rehabilitation Research, and other officials of Federal agencies, respecting ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.**

* Providing the Congress, on a continuing basis, advice, recommendations, legislative proposals, and any additional information which the Council or the Congress deems appropriate;

* Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

* Advising the President, the Congress, the Commissioner of the Rehabilitation Services Administration, the Assistant Secretary for Special Education and Rehabilitative Services within the Department of Education, and the Director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended;

* Providing advice to the Commissioner with respect to the policies of and conduct of the Rehabilitation Services Administration;

* Making recommendations to the Director of the National Institute on Disability and Rehabilitation Research on ways to improve research, service, administration, and the collection, dissemination, and implementation of research findings affecting persons with disabilities;

* Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of such Council for legislative and administrative changes to ensure that such recommendations are consistent with the purposes of the Council to promote the full integration, independence, and productivity of individuals with disabilities;

* Preparing and submitting to the President and the Congress a report entitled *National Disability Policy: A Progress Report* on an annual basis; and

* Preparing and submitting to the Congress and the President a report containing a summary of the activities and accomplishments of the Council on an annual basis.

*Population Served and Current Activities*

While many government agencies deal with issues and programs affecting people with disabilities, the National Council is the only Federal agency charged with addressing, analyzing, and making recommendations on issues of public policy which affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, status as a veteran, or other individual circumstance. The National Council recognizes its unique opportunity to facilitate

**independent living, community integration, and employment opportunities for people with disabilities by assuring an informed and coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in community and family life.**

**The National Council plays a major role in developing disability policy in America. In fact, it was the Council that originally proposed what eventually became the Americans with Disabilities Act of 1990. Our present list of key issues includes monitoring progress toward the implementation of the Americans with Disabilities Act, and the development of a comprehensive national disability policy.**

*Current Members*

**Marca Bristo, Chairperson**
**Chicago, IL**

**John A. Gannon, Vice Chairperson**
**Washington, DC and Cleveland, OH**

**Linda W. Allison**
**New York, NY**

**Ellis B. Bodron**
**Vicksburg, MS**

**Larry Brown, Jr.**
**Potomac, MD**

**Mary Ann Mobley Collins**
**Beverly Hills, CA**

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**Robert S. Muller**
**Grandville, MI**

**Bonnie O'Day**
**Somerville, MA**

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**McLean, VA**

**Shirley W. Ryan**
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**Grand Rapids, MI**

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